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10 Attorneys for Defendant

11 GOOGLE INC.

12 **UNITED STATES DISTRICT COURT**  
13  
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 ROBERT HEATH, on behalf of himself and  
16 others similarly situated,

17 Plaintiff,

18 v.

19 GOOGLE INC., a Delaware corporation,

20 Defendant.

Case No. 15-cv-01824-BLF

**DEFENDANT GOOGLE INC.'S NOTICE  
OF MOTION AND MOTION TO DISMISS**

Date: September 3, 2015

Time: 9:00 a.m.

Location: Courtroom 3, 5th Floor, San Jose

Complaint Filed: April 22, 2015

Trial Date: Not Set

**NOTICE OF MOTION AND MOTION TO DISMISS**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on September 3, 2015 at 9:00 a.m., or as soon thereafter as counsel may be heard in Courtroom 3, 5th Floor of the above-titled court, located at 280 South 1st Street, San Jose, California 95113, defendant GOOGLE INC. will, and hereby does, move this Court pursuant to Rule 12(b) of the Federal Rules of Civil Procedure and Rule 7-1 of the Northern District Local Rules of Court for an order dismissing this action for failure to state a claim upon which relief can be granted on grounds that plaintiff fails to state a cause action for disparate impact for applicants because such claims are not actionable under the Age Discrimination in Employment Act ("ADEA") for applicants; plaintiff does not identify a specific policy or practice allegedly causing discrimination as required by the ADEA; no cause of action exists for a Rule 23 class action under the ADEA; the FEHA does not apply to plaintiff or applicants outside of California; plaintiff lacks standing to bring a claim under the Fair Employment Housing Act ("FEHA"); and plaintiff cannot bring FEHA claims on class members' behalf when he does not have standing to bring his own claim.

The Motion to Dismiss is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities in support thereof, the pleadings on file herein and such arguments and admissible evidence as may be presented at the time of hearing. Defendant met and conferred with Plaintiff regarding the hearing date in accordance with the Court's standing orders.

DATED: June 11, 2015

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

By: /s/ Thomas M. McInerney

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